

REMARKS

Reconsideration of the pending application is respectfully requested. The currently pending claims are claims 10-15. No new matter is added by way of this response.

The Examiner has rejected claims 10-15 as unpatentable under 35 U.S.C. 103(a) in view of U.S. Patent No. 5,549,589 (to Horney et al.). According to the Examiner, Horney teaches all aspects of the claimed invention with the exception of the density range. The Examiner states that Horney does teach a formula to determine the density, and therefore, it would be obvious to one skilled in the art to arrive at the present measurements.

The Examiner has also stated that Horney teaches the distribution strip and incorporates by reference the teaching of chemically treated cellulosic materials of U.S. Patent No. 4,898,642 (to Moore et al.). Regarding claims 14 and 15, the Examiner indicates that horizontal wicking and fluid distribution rates are presumed inherent features of the invention, and since the structural requirements are taught in Horney, these claims are also anticipated and/or obvious.

The rejections are traversed, and reconsideration is respectfully requested.

Applicants note that Horney et al. was applied against the parent cases which were directed to methods and product claims, wherein applicants pointed out the differences in the claimed structures. The parent cases subsequently issued. The same arguments can be applied in the present case directed to the distribution strip as discussed below.

Applicants respectfully submit that claims 10-15 are patentable over Horney et al. First, Horney does not teach or suggest a distribution layer having the claimed fibers. Rather, Horney discloses fluid distribution members having three basic components: chemically stiffened, twisted and curled bulking fibers, high surface area fibers and binder fibers. These chemically treated fibers are cross-linked (column 5, line 16 to column 6, line 49). Horney does not teach or suggest the claimed cellulosic fibers, i.e., cotton linters, mercerized cellulose or fibers which are treated with a polyvalent ion.

Furthermore, applicants submit that inherency based on a prior art construct to support an obviousness rejection does not apply to the claimed invention. The structures of Horney do not inherently have the same properties, such as “a density of between 0.25 grams per cubic centimeter and 0.55 grams per cubic centimeter,” as required for the claimed structures, at least because the fibers of the claimed invention are different from those disclosed in Horney. Furthermore, Horney does not require that “one hour after three 100 ml insults to the structure at 20 minute intervals in a last-three-inches-of-the-fluid-storage-layer-longitudinal-and-transverse-horizontal-wicking test, the fluid storage layer has horizontal wicking of 22 g/g or greater.” Therefore, it would not be obvious to employ the horizontal wicking test, given these differences in structures, to arrive at the same performance values as claimed.

The Examiner has also rejected claims 10-14 under the judicially created doctrine of obviousness-type double patenting over claims 1, 3, 4, and 6 of U.S. Patent No. 6,649,809. Applicants note that the ‘809 claims are method claims directed to the manufacture of the absorbent structure. In order to overcome this rejection, the Examiner has requested a terminal disclaimer.

Applicants submit herewith a terminal disclaimer in compliance with the Examiner’s request in view of the ‘809 patent upon a finding of allowable subject matter.

Therefore, in view of the above remarks, it is respectfully requested that the rejections be withdrawn and that all pending claims be allowed and the case passed to issue.

If there are any other issues remaining which the Examiner believes could be resolved through either a Supplemental Response or an Examiner's Amendment, the Examiner is respectfully requested to contact the undersigned at the telephone number indicated below.

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Respectfully submitted,

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